UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
_____

Ex parte CLAUDE CHAPEL, SERGE DEFRANCE and
CHRISTOPHE VINCENT
_____

Appeal 2009-014539
Application 09/869,397
Technology Center 2400
_____

Before LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP, and
ANDREW J. DILLON, *Administrative Patent Judges*.

DILLON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-10. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants' invention provides a method for alternately reading previously recorded digital data while recording data within a series of logic blocks on a medium. *See* Abstract.

Claim 1 is illustrative with key disputed limitations emphasized:

> 1.   A process for recording a digital video and audio data stream wherein recording being carried out on a medium organized in the form of logic blocks in series and comprising a recording and reading head, said process comprising the steps of:
>
> *recording data on said medium as a pattern of at least one recorded block immediately followed by at least one unrecorded block; and*
>
> *following the triggering of the reading of the recorded data, alternately reading a continuous series of said previously recorded blocks and continuing the recording of data in said unrecorded blocks immediately following the blocks read.*

The Examiner relies on the following as evidence of unpatentability:

Isaka	US 5,706,388	Jan. 6, 1998
Ogawa	US 6,115,799	Sep. 5, 2000 (filed Jul. 21, 1997)

THE REJECTIONS

The Appellants seek our review of the following rejections by the Examiner.[1]

1. Claims 1, 2, 5 and 7-10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Isaka.

2. Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Isaka in view of Official Notice.

3. Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Isaka and Ogawa.

CONTENTIONS

Regarding representative claim 1, the Examiner finds that Isaka discloses a process for recording a digital video and audio stream where data is recorded as a pattern of blocks with at least one recorded block followed by at least one unrecorded block. The Examiner also finds that Isaka teaches that following the triggering of the reading of recorded data the process alternately reads a continuous series of previously recorded blocks and records data in unrecorded blocks immediately following the blocks read. Ans. 3-4.

Appellants argue that Isaka does not disclose the process set forth in representative claim 1 as Isaka teaches that data is recorded in consecutive areas on the recording medium in the receiving order. Appellants argue that in Isaka the data is not interlaced but rather is recorded in successive blocks,

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[1] Throughout this opinion, we refer to the Appeal Brief filed July 27, 2007 and the Examiner's Answer mailed November 15, 2007.

noting: "[n]othing in Isaka indicates that the data is recorded in one block, then one block is left free, then another block is recorded and so on, as taught in the Appellant's Specification and claimed by at least the Appellant's claim 1." Br. 14. The issues before us, then, are as follows:

ISSUES

1. Under § 102, has the Examiner erred in rejecting claims 1, 2, 5 and 7-10 by finding that Isaka anticipates (1) a process for recording a digital video and audio stream where data is recorded as a pattern of blocks with at least one recorded block followed by at least one unrecorded block , and (2) wherein following the triggering of the reading of recorded data the process alternately reads a continuous series of previously recorded blocks and records data in unrecorded blocks immediately following the blocks read ?

2. Under § 103 has the Examiner erred in rejecting claims 3 and 4 by finding that Isaka, in combination with Official Notice, would have taught or suggested (1) the continued recording in a loop within blocks previously read, and (2) a process where recorded blocks are read and rewritten in a non-interlaced manner before reading has been triggered?

3. Under § 103 has the Examiner erred in rejecting claim 6 by finding that Isaka and Ogawa collectively would have taught or suggested the step of detecting sequences of free blocks on the medium for applying the steps of recording and reading, as set forth in claim1?

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v.*

Quigg, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general
evidentiary standard for proceedings before the Office).

1. Isaka teaches a recording system that can reproduce previously
   recorded information without stopping a recording operation for
   information currently being received. *See* Abstract.

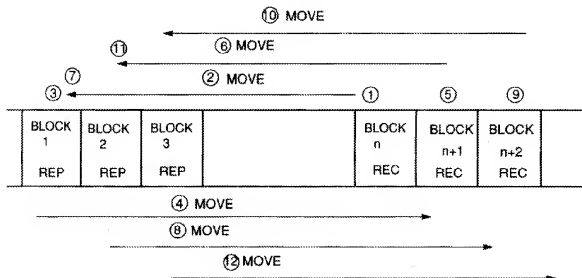2. Figure 3 of Isaka is reproduced below:

FIG.3

Figure 3 of Isaka illustrates the order of the steps of a reproducing
and recording operation.

3. Isaka teaches that data is recorded to and read from a series of
   blocks 1 through n+2 which each correspond to an area of the
   recording medium. Col. 6 ll. 8-12; *See* Fig. 3.

4. Isaka teaches that the operation depicted in Figure 3 starts by
   recording data in block n, when data has already been recorded in
   blocks 1 through n-1, and that after returning to reproduce the data

       in block 1, the process returns to record data in block n+1. Col. 6
       ll. 14-24; *See* Fig. 3.

5. Isaka teaches reproducing data from blocks 1 through n-1 and
recording data in blocks n through n+2. *See* Fig. 3.

6. Ogawa teaches the detection of free memory blocks in response to
a request to store data. Col. 6 ll. 9-14.

ANALYSIS

The rejection of claims 1-2, 5 and 7-10 under §102(e)
as anticipated by Isaka

       In support of the patentability of claim 1, claim 7 and those claims
that depend therefrom, Appellants urge that the Isaka reference is defective
in that it fails to show that "data is not recorded in the receiving order, as
blocks unrecorded are recorded later and are thus interlaced with data
previously recorded." Br. 14. As the feature of interlacing blocks of data is
not expressly recited in the claims we are unpersuaded by that argument.

       As urged by the Examiner, Isaka shows data recorded in one block
which is followed, at least temporarily, by an unrecorded block. Ans. 3. That
argument finds support in our Findings of Fact. (FF3). Further, we concur
with the Examiner's opinion that Isaka shows the recording of data in
unrecorded blocks following the blocks which are read. Ans. 4; (FF4).

       Appellants urge that in addition to its dependency from claim 1, claim
2 recites that recording is continued in contiguous blocks in a non-interlaced
manner. Claims 5 and 8 recite the recording of data in a group of N
contiguous blocks. We are unpersuaded by these arguments. As described in

our Findings of Fact above, we find that Isaka demonstrates non-interlaced recording of data in a group of consecutive blocks. (FF4); Fig. 3.

Appellants urge that claims 9 and 10 further characterize the pattern of blocks as a recorded block followed by an unrecorded block. For the reason set forth above with respect to claims 1 and 7 we believe Isaka shows data recorded in one block with the next block, at least temporarily, an unrecorded block.

The rejection of claims 3 and 4 under §103(a) over Isaka and Official Notice

With regard to claims 3 and 4, Appellants merely restate their arguments above with respect to claim 1. For the reason set forth above we are unconvinced by that argument.

The rejection of claim 6 under §103(a) over Isaka and Ogawa

Claim 6 depends from claim 1 and additionally recites that sequences of free blocks are detected for applying the steps of recoding and reading. The Examiner notes that Ogawa teaches the detection of sequences of free blocks. Ans. 6. That position is supported by our Findings of Fact. (FF6). Appellants urge the patentability of claim 6 for the same reasons set forth above with respect to claim 1. We are unpersuaded by that position for the reason set forth above.

CONCLUSION

The Examiner did not err in rejecting claims 1-10.

ORDER

The Examiner's decision rejecting claims 1-10 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

Vsh